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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 WESTERN TOWBOAT COMPANY,

11 Plaintiff,

12 v.

13 VIGOR MARINE, LLC,

14 Defendant.

No. C20-0416-RSM

ORDER GRANTING PLAINTIFF
WESTERN TOWBOAT COMPANY'S
MOTION TO COMPEL

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16 **I. INTRODUCTION**

17 This matter comes before the Court on Plaintiff Western Towboat Company (Western)'s
18 unopposed Motion to Compel. Dkt. #23. On March 11, 2021, parties stipulated to extend the
19 time for Defendant Vigor Marine, LCC ("Vigor") to file its response. Dkt. #26. However, as
20 of the date of this Order, Vigor has filed no response to Western's Motion to Compel.

21 **II. BACKGROUND**

22 The Court need not set forth a complete background of this case for purposes of
23 resolving Western's motion. This admiralty and maritime action arises out of the sinking of
24 Vigor's Drydock YFD 70 ("Drydock") on or about October 26, 2016 in the Monterey Bay
25 Marine Sanctuary. Dkt. #1. After the Drydock's sinking, Vigor claims it took immediate action
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1 to minimize its exposure to penalties levied by National Oceanic and Atmospheric
2 Administration (“NOAA”) under the National Marine Sanctuaries Act. Specifically, Vigor
3 claims that it arranged for a survey and worked with NOAA to identify the location of the
4 Drydock and assess the damage to the environment caused by the sinking. Dkt. #15 at ¶¶ 45.

5 On March 16, 2020, Western filed this action against Vigor alleging breach of maritime
6 contract and seeking a declaratory judgment that Western was not responsible for the sinking
7 of the Drydock in the Marine Sanctuary. Dkt. #1 at ¶¶ 17-26. On May 20, 2020, Vigor
8 answered the complaint with counterclaims, including a claim that Western was unjustly
9 enriched by Vigor’s expenditures incurred to reduce or minimize the amount of the NOAA
10 penalty assessment. Dkt. #15 at ¶¶ 40-45. On March 1, 2021, Western filed this unopposed
11 motion seeking to compel production of documents related to Vigor’s counterclaim for unjust
12 enrichment in connection with its work with NOAA. Dkt. #23.

13 14 15 **III. DISCUSSION**

16 **A. Legal Standard**

17 “Parties may obtain discovery regarding any nonprivileged matter that is relevant to
18 any party’s claim or defense and proportional to the needs of the case, considering the
19 importance of the issues at stake in the action, the amount in controversy, the parties’ relative
20 access to relevant information, the parties’ resources, the importance of the discovery in
21 resolving the issues, and whether the burden or expense of the proposed discovery outweighs
22 its likely benefit.” Fed. R. Civ. P. 26(b)(1). Information within this scope of discovery need
23 not be admissible in evidence to be discoverable. *Id.* “District courts have broad discretion in
24 determining relevancy for discovery purposes.” *Survivor Media, Inc. v. Survivor Prods.*, 406
25 F.3d 625, 635 (9th Cir. 2005) (citing *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002)).
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1 If requested discovery is not answered, the requesting party may move for an order compelling
2 such discovery. Fed. R. Civ. P. 37(a)(1). The party that resists discovery has the burden to
3 show why the discovery request should be denied. *Blankenship v. Hearst Corp.*, 519 F.2d 418,
4 429 (9th Cir. 1975).

5 **B. Western's Motion to Compel**

6 Western's motion to compel seeks production of documents related to Vigor's unjust
7 enrichment counterclaim. Dkt. #23. Specifically, Western requests production of (1) any
8 documents related to the investigation it conducted with NOAA; (2) communications with
9 NOAA and/or with Drydock owner Amaya Curiel regarding the Drydock's sinking, including
10 the ROV expedition Vigor conducted in July 2018; (3) communications related to the survey
11 Vigor participated in, including instant messages and chats; (4) any post-incident reports,
12 investigations, analysis or other evaluations that Vigor conducted related to the Drydock
13 sinking; (5) all photographs, videos, or digital or motion pictures relevant to this action; (6) all
14 documents that support or relate to Vigor's counterclaims. Dkt. #23 at 4-10. Given that Vigor
15 has failed to file a response, Western's motion is unopposed.

16 Under this district's local rules, a party's failure to file an opposition to a motion may
17 be construed as an admission that the motion has merit. Local Rules W.D. Wash. LCR 7(b)(2).
18 Having considered Western's motion, the Court finds that the requested documents may
19 reasonably lead to information relevant to Vigor's unjust enrichment counterclaim. Given
20 Vigor's failure to respond to the instant motion, it has not met its burden to show why any of
21 these requests should be denied. *Blankenship*, 519 F.2d at 429. Accordingly, the Court
22 GRANTS Western's motion.

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IV. CONCLUSION

Having reviewed Plaintiff's motion, the exhibit attached thereto, and the remainder of the record, the Court hereby finds and ORDERS that Plaintiff Western Towboat Company's Motion to Compel, Dkt. #23, is GRANTED. Within fourteen (14) days of the date of entry of this Order, Defendant shall produce to Plaintiff the documents requested therein.

Dated this 13th day of May, 2021.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE